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right, cannot be sustained. A man may be deprived of a public duty for the good of others (and this is the basis of electoral disabilities) or he may be punished by such a deprivation. This theory has been recognized in criminal law from the earliest times and is the basis of the so-called infamous punishments.

While the reasoning of the Supreme Court and of Pergola may not appeal to the majority of American readers the articles in *Il Progresso del Diritto Criminale* should, however, be read by all who are interested in the conflict of criminal with civil and public law.

J. L.

**Article 40 of the Italian Code.**—Hon. Erico Romano di Falco, in *Il Progresso del Diritto Criminale* (Sept.-Oct., 1914), attacks Article 40 of the new Italian code of criminal procedure on the ground that its provision that no judge who has given sentence in a proceeding can participate in the same proceeding in its later stages. He claims that the wording of such a provision includes much more than it was intended to cover. It prevents a case being sent back to a judge by a court of appeals; it prevents a judge from continuing in a case from beginning to end, even while the case remains in his court.

The article, as we have said of so many written by Italian legal philosophers, shows on one hand a pettiness of which the Holy Trinity Church case shows the proper solution, but, on the other hand, it shows a law-abiding attitude which cannot be too strongly recommended. It must come if we are to be a great judicial nature. The swing of the pendulum away from the pettifogging lawyer has gone too far.

J. L.

**Prof. Masucci on the Defense of an Absent Defendant.**—Prof. Luigi Masucci has an article entitled "*La Lipesa dell'impulato nel giudizio contumaciale*" in *Il Progresso del Diritto Criminale* (Sept.-Oct., 1914), in which he upholds the new Italian code of criminal procedure as far as it requires the appointment of an attorney for the absent defendant in criminal prosecutions. If the defendant in a criminal case, duly served, fails to appear it is the duty of the court to appoint a lawyer to defend the absentee. But this does not open the door to a defense on the merits and the admission of evidence for the defendant. For, while the absence of the defendant not only shows an attitude of disobedience to court, justifying a refusal of all consideration towards him, it is equivalent to a plea of "Guilty." And, while the interest of society in the proper conduct of punishment requires that every accused should be defended in his absence, it does not obligate or authorize the state, as his agent, to advance pleas for him. Prof. Masucci believes this to be practically right, but his theories of the underlying principles are different. He does not believe that proof of innocence should be admissible, because this would put a premium on absence, and the absence might well allow the proofs to acquire greater weight than they would have in the presence of the accused. Testimony as to physical ability, while not intentionally false, might lose all weight when the defendant stood in court. But he does believe that documentary evidence of innocence should be admissible because it could not be affected by the accused's presence.

This changes the basis of the rule. It does not seem to be so logical as to prohibit judgment by default, on the ground that criminal justice is a public function and that the interest of society is against the entry of criminal judgments by default. Neither does the distinction between parole and written evidence seem legitimate. Either a judgment upon the commonwealth's evidence should be allowed, or else the counsel for the defense should be allowed to offer evidence. If the present Italian system is followed the judge should cross-examine the

witness as for the prosecution and "non-pros" where no case has been made out. This is the system generally followed in the United States. The accused has certainly authorized no one to enter a plea of "Guilty" on his behalf, and the interest of society certainly precludes the entry of criminal judgments when the commonwealth has failed to prove its case.

J. L.

### PENOLOGY.

**Report of the Prison Inspector in Alabama.**—The report of the prison inspector, Dr. W. H. Oates, of Alabama for the year ending September 30, 1914, has been received. We find in it a description of new jails in the State of Alabama that should encourage the most ardent friends of reform in prison construction. The description follows:

"In building new jails in Alabama the following ideas are being carried out:

"A sufficient number of apartments for the proper separation of whites and negroes, males and females, together with suitable places for sick and insane persons.

"The buildings to be as nearly fireproof as possible; with apparatus for extinguishing fire in readiness at all times and to be frequently tested and inspected.

"Safety vestibule for entering each cell apartment.

"All cells to be so arranged that they can be simultaneously unlocked in case of fire or other emergency.

"The cells to be placed against the wall (all walls being lined with steel), with a window in each cell, the windows being protected by tool-proof steel bars.

"The floors to be of concrete on metal beams, laid on an incline to drain pipes.

"In each central corridor is installed a concrete bench; and in each apartment adequate bathing facilities (shower baths for the men and tubs for the women), likewise a sanitary drinking fountain in each apartment.

"The dirty, vermin infested, insanitary mattress has been discarded and replaced by the swinging canvas hammock, similar to the kind used in the United States Navy.

"Prisons must necessarily be secure, but they may also be clean, healthful and comfortable. They should in all cases be so constructed that sunlight and fresh air can be freely admitted. Sunlight is a universal germicide and fresh air is its invaluable ally.

"Each jail should also contain a space in which daily and compulsory exercise in the open air may be had. An abundant supply of fresh, uncontaminated drinking and bathing water is an essential, and frequent baths should be required.

"The jails are painted white on the interior to promote cleanliness and to show dirt.

"By way of explanation: In referring to cells as interior cells we mean cells that are located in the center of a room with a passageway between them and the wall. This type of cell is invariably seven feet high and practically seven feet square, and in the greater number of cases they have solid steel tops and sides except for a small amount of grating, or lattice, so to speak, nearest the windows. In a few cases one entire side is grating or lattice, the balance being solid.

"Exterior cells are those next to and forming a part of the wall of the building. These are found only in the modern type jails. The ceilings range